

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.Rev.Pet.No. 13 of 2000

**CRL.A.30/1998 OF SESSIONS COURT, KOZHIKOE,
CC.295/1996 OF JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY.**
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REVISION PETITIONER/APPELLANT/ACCUSED:

**HARIDASAN, S/O. RAMAN,
PUTHIYOTTUKANDY VEETIL,
KARUVANOOR AMSOM AND DESOM OF
KOZHIKODE TALUK.**

BY ADV. SRI.SUNNY MATHEW.

RESPONDENT/RESPONDENT/COMPLAINANT:

**THE EXCISE INSPCTOR, BALUSSERY,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. C.K. SURESH.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

ORDER ON CRL.M.P. NO. 66/2000 IN CRL.R.P. NO. 13/2000

DISMISSED

18/09/2007.

SD/- K.R.UDAYABHANU, JUDGE.

//TRUE COPY//

prv.

K.R.UDAYABHANU, J

Crl.R.P.No.13 of 2000

Dated this the 18th day of September, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 55(a) of the Abkari Act and sentenced to undergo R.I. for one year and to pay a fine of Rs.2,000/- and in default, to undergo simple imprisonment for four months on the prosecution allegation that the accused was found carrying 20 litres of illicit arrack on 10.2.1995 at 5.00 p.m.

2. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 3, Exts. P1 to P4 and MOI.

3. PW3 is the preventive officer who detected the offence and arrested the accused at the spot. He has testified as to the detection and recovery and taking sample vide Ext. P4 mahazar which was allegedly attested by PW2. PW2, the occurrence witness, has turned hostile and did not support the prosecution. PW1, the Excise Inspector, who prepared Ext. P1 occurrence report, has testified with respect to the incident and has identified the accused and he has also proved Ext. P3

chemical analysis report which would show that the sample contained 19.49% by volume of ethyl alcohol would establish that the contraband is illicit liquor. I find that the evidence of PW3 did not contain any material contradictions or discrepancies so as to disbelieve his version. In the circumstances and in view of the concurrent findings of the courts below it has been established that the accused was found carrying illicit liquor.

4. Counsel for the revision petitioner has contended that the offence under Section 55(a) will not be attracted in view of the decision in **Surendran vs. Excise Inspector (2004(1) KLT 404)** which was upheld in **Mohanan vs. State of Kerala (2007 (1) KLT 845)**. This court has held that possession and transportation will attract Section 55(a) only if it is in the course of illegally importing or exporting and that for possession of illicit liquor alone, the provision that would be attracted is Section 58 of the Abkari Act. In the circumstances, I find that only Section 55(a) will be attracted and the accused is not guilty of the offence under Section 55(a) of the Abkari Act.

5. He stands convicted for the above offence.

6. The punishment then for the offence under Section 58 is imprisonment up to six months or fine of Rs.3,000/- or both. The incident has taken place in February 1995. More than a decade has elapsed. In the circumstances, the sentence is modified to pay a fine of Rs.3,000/- and in default, to undergo simple imprisonment for one month.

The revision petition is disposed of as above.

**K.R.UDAYABHANU,
JUDGE**

csl